Supreme Court, U.S.
FILED
JUL 13 1992
OFFICE OF THE CLERK

No. 91-998

In the Supreme Court of the United States

OCTOBER TERM, 1992

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

NADER E. SOLIMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

TABLE OF AUTHORITIES

Cases:	Page
Crane v. *Commissioner*, 331 U.S. 1 (1947)	5
Malat v. *Riddell*, 383 U.S. 569 (1966)	5
Pomarantz v. *Commissioner*, 867 F.2d 495 (9th Cir. 1988)	5, 6
Statutes:	
Internal Revenue Code (26 U.S.C.):	
§ 280A	1, 2, 3, 5
§ 280A (a)	1-2
§ 280A (c) (1)	2
§ 280A (c) (1) (A)	2, 3, 4, 5, 7
§ 280A (c) (1) (B)	2
Miscellaneous:	
H.R. Rep. No. 658, 94th Cong., 1st Sess. (1975)	3
S. Conf. Rep. No. 1236, 94th Cong., 2d Sess. (1976)	5
S. Rep. No. 938, 94th Cong., 2d Sess. (1976)	3, 5

In the Supreme Court of the United States

OCTOBER TERM, 1992

No. 91-998

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

NADER E. SOLIMAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

---

1. There is no merit to respondent's contention (Resp. Br. 14-22) that, in enacting Section 280A, Congress intended to curtail abuses in the deduction of "home office" expenses only by employees and not by self-employed individuals. The "principal place of business" requirement in the statute is equally applicable to sole proprietors and to employees. Section 280A generally precludes deduction by "a taxpayer who is an individual or an S corporation" of any "deduction otherwise allowable under this chapter * * * with respect to the use of a dwelling unit which is used by the taxpayer * * * as a residence." 26

U.S.C. 280A(a). By its express terms, the statute applies to any "taxpayer" who is an "individual," a term that of course includes any individual" who files a return as the sole proprietor of a business. No court has adopted (or even addressed) respondent's novel assertion that the statutory restriction on home office deductions does not apply to self-employed individuals.

With respect to employees, Congress imposed a separate and additional requirement for the deductibility of home office expenses. While self-employed individuals need only establish that their home office is "exclusively used on a regular basis" as their "principal place of business" (26 U.S.C. 280A(c)(1)(A)), employees must additionally show that "the exclusive use * * * is for the convenience of his employer" (26 U.S.C. 280A(c)(1)). The additional requirement for employees under Section 280A(c)(1) confirms that the basic requirement of the statute—that the home office be the taxpayer's "principal place of business"—applies also to individuals who are *not* employees, and thus to individuals who are self-employed.

That Congress contemplated that Section 280A would apply to the self-employed is further evidenced by Section 280A(c)(1)(B), which allows a deduction for home offices used for meeting or dealing with the taxpayer's "patients" or "clients." 26 U.S.C. 280A(c)(1)(B). This exception obviously is directed to such traditionally self-employed individuals as doctors, lawyers and accountants who practice their profession from their homes.

Nothing in the legislative history even remotely suggests that the inclusion of "individual" taxpayers (including individuals who are self-employed) in the restrictions established by Section 280A was an oversight. Respondent points (Resp. Br. 19-20) to passages in the Committee Reports recounting that many employees who maintained offices in their homes had invoked the preexisting "appropriate and helpful" standard to claim deductions for the inherently personal expenses they incurred in maintaining their residences. But the fact that Congress considered abuses by employees worthy of specific mention (and specific treatment) does not mean that similar abuses by the self-employed are not also subject to the plain requirements of Section 280A or that Congress intended to give self-employed individuals a tax advantage that was denied to employees.

In particular, nowhere does the legislative history suggest that self-employed individuals would somehow be exempted from the "principal place of business" requirement adopted in Section 280A(c)(1)(A). The abuses resulting from home office deductions under the preexisting "appropriate and helpful" standard were described by Congress in the most general terms, without making any distinction between employees and the self-employed. See H.R. Rep. No. 658, 94th Cong., 1st Sess. 160 (1975); S. Rep. No. 938, 94th Cong., 2d Sess. 147 (1976). As this case reflects, the potential for abuse of home office deductions as a means for recovering personal living expenses is equally present for the self-employed as for employees. Congress did not omit the self-employed in curtailing the improper deduction of home office expenses by any "taxpayer" who is an "individual." 26 U.S.C. 280A(a).

2. As is discussed in our opening brief (Pet. Br. 14-18), the text and history of Section 280A require that a comparison be made between the various locations where an individual conducts his trade or business to determine *which* place of business is the one *principal* place of his business. The courts below

concluded, however, that the office in respondent's spare bedroom was his "principal place of business" because that office was "essential" to his business, he spent a "substantial" amount of time there, and he used no other location for performing the administrative tasks of his business (Pet. App. 5a, 24a). The fundamental defect of the approach taken by the courts below is that it fails to compare the relative importance of respondent's various places of business to determine which was the "principal" one.

Respondent relies (Br. 30-31) on the conclusion of the Tax Court that the professional medical activities respondent performed at the hospitals, and the ministerial duties he performed at home, "were equally essential to a successful medical practice" (Pet. App. 20a). That a taxpayer has an "essential" need for an office in his business, and chooses to maintain that office in his home, establishes only that the taxpayer's home office is an "appropriate and helpful" place where he carries on business activities. Congress clearly rejected the "appropriate and helpful" standard in enacting the "principal place of business" requirement in Section 280A(c)(1)(A). See Pet. Br. 12-13 & n.5.

The fact that an office is "essential" to a business, and that no other office location is used by the taxpayer, does not make the home office the "principal" place of the business. Record-keeping and other administrative support activities may be "essential" or "important" to the business, but it robs words of their meaning to assert that the place where these ancillary, supporting functions are performed is "the principal place of business" of the taxpayer.[1] By

[1] Congress considered, but rejected, a proposal similar to that adopted by the court of appeals in this case. The Senate version of the bill that contained Section 280A included a provision that would have allowed an employee to deduct home office expenses if the employer did not provide the employee with an office (S. Rep. No. 938, *supra*, at 148). That provision was deleted in conference (S. Conf. Rep. No. 1236, 94th Cong., 2d Sess. 435 (1976)) and was not enacted by Congress.

applying Section 280A(c)(1)(A) as if it allowed a home office deduction for the principal *office* of the taxpayer's business, rather than for the principal *place* of the taxpayer's business, the courts below ignored the plain language of the statute.

3. Apparently accepting that a comparative analysis of the different locations where business is performed is required in determining the "principal place" of his business, respondent claims (Br. 28, 30-31) that the administrative duties he performed in his home office were as important as the medical duties that he performed at the three hospitals where he treated patients. That contention defies common sense and deprives the words of the statute of their ordinary meaning. See *Malat* v. *Riddell*, 383 U.S. 569, 571 (1966) (quoting *Crane* v. *Commissioner*, 331 U.S. 1, 6 (1947) ("the words of statutes—including revenue acts—should be interpreted where possible in their ordinary, everyday senses")).

Here, as in *Pomarantz* v. *Commissioner*, 867 F.2d 495 (9th Cir. 1988), "the hospital, rather than the home, was [the doctor's] principal place of business. He consistently spent more time on duty at the hospital rather than at home. The essence of his profession is the hands-on treatment of patients which he did only at the hospital and never at home. Finally, he generated income only by seeing patients at the hospital not studying or writing at home. His home office was not his principal place of business within 26 U.S.C. § 280A(c)(1)(A)." 867 F.2d at 497-498.

It is the performance of medical functions, not billing and record-keeping, for which respondent underwent many years of schooling and training. The administrative duties that he performed in his home office, although necessary to his business, cannot be said to be his "principal" business activity. It is certainly not the activity for which patients hire his services. While a doctor must maintain patient records for billing and other purposes, these administrative duties can be performed at many other locations by less highly trained individuals.[2] The same obviously cannot be said of the medical duties that respondent performed at the hospitals.

Moreover, respondent has acknowledged (Pet. App. 14a) that he spent considerably *more* time at the hospitals providing medical care than he did attending to administrative duties in his home office. More than half of respondent's total working time was spent at Suburban Hospital (*ibid.*), where he "administer[ed] anesthesia to patients before surgery, car[ed] for patients immediately after surgery, and treat[ed] patients for pain" (*id.* at 13a). In terms both of the importance of the duties performed and the amount of time expended in generating his business income, Suburban Hospital was respondent's "principal place of business" under any logical interpretation of the words of the statute. See *Pomarantz* v. *Commissioner*, 867 F.2d at 497-498; Pet. Br. 15-16.

The courts below erred by failing to engage in the comparative analysis required by the statute and by misreading the statute to permit deductions for the principal *office* of the business rather than the prin-

[2] Indeed, respondent employed a billing service working at another location to assist in preparing the bills for his patients (C.A. App. 38-39, 119).

cipal *place* of the business. The location where respondent spent the *lesser* part of his time, and performed the *less* important business activities of his profession, cannot constitute the taxpayer's "principal place of business" under Section 280A(c)(1)(A).

The judgment of the court of appeals should be reversed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JULY 1992

☆ U. S. GOVERNMENT PRINTING OFFICE: 1992 312324 45494